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March 31, 2004

The Honorable Bradley Smith
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC

Dear Chairman Smith,

Attached you will find a complaint filed by the Republican National Committee and Bush-Cheney '04, Inc. The activities of the various groups and individuals described in this complaint demonstrate a massive conspiracy to corrupt the federal campaign finance system.

These groups and individuals described herein have conspired to circumvent the law by creating a network of newly formed 527 political organizations working in complicity with other long established special interest groups and wealthy individuals to illegally raise and spend soft money while illegally coordinating their efforts in violation of 11 C.F.R. § 109.21, all with the express purpose of defeating President Bush. This massive ongoing effort has resulted in numerous violations of the Act.

These illegal activities are ongoing. It is clear from their own statements that these special interest groups and individuals will not stop their illegal efforts, especially since the Commission's powers do not include any relief that can be afforded until long after the election.

Even if the Commission were to expedite its proceedings, the administrative process under which the Commission must operate does not include timely relief. See 2 USC § 437g (a).

No penalty, civil or criminal, after the fact could possibly remedy the irreparable harm caused by allowing this illegal activity to continue unabated. These individuals and groups understand and appreciate that fact. Allowing this activity to continue would effectively destroy and make meaningless the campaign finance system mandated by Congress in 2002.

For these reasons, we respectfully request and urge the Federal Election Commission to dismiss this complaint at its next Executive Session meeting, in order to allow the complainants to seek immediate relief in the Federal District Court for the

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District of Columbia. Such responsible final action by the Commission would legally allow Complainants to seek an immediate judicial remedy pursuant to 2 U.S.C. § 437g(a)(8) to this conspiracy of unprecedented proportions.

This action by the Commission would be unprecedented, but so is this matter. In this unique circumstance the Complainants respectfully submit that the Commission should follow the plain wording of 2 U.S.C. § 437g(a)(8) and dismiss this complaint, thereby allowing immediate judicial review. We respectfully submit that the Commission's mandate to enforce the Federal Election Campaign Act demands such extraordinary action.

The Complainants respectfully request that the Federal Election Commission consider the motion to dismiss pursuant to 2 U.S.C. § 437g(a)(8) at the next possible Executive Session.

Sincerely,



Thomas J. Josefiak
General Counsel

Cc: Commissioner Ellen L. Weintraub
Commissioner David M. Mason
Commissioner Danny L. McDonald
Commissioner Scott E. Thomas
Commissioner Michael E. Toner
Lawrence Norton, General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

COMPLAINT

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RESPONDENTS

Moveon.org;

Et. al.

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"[T]he McCain-Feingold goal and objective, which I support, is to eliminate altogether the capacity of soft money to play the role that it does in our politics." (Sen. John Kerry, Congressional Record, 3/27/01, p. S2930)

"In addition to the overwhelming amounts of soft money that were raised and spent in 2000, hundreds of millions of dollars were also spent on so-called issue ads. ... Those ubiquitous television ads are purchased by all kinds of organized special interests to persuade the American people to vote for or against a candidate. These ads, usually negative, often inaccurate, are driving the political process today. Do they violate the spirit of the campaign finance laws in this country? They certainly do." (Sen. John Kerry, Congressional Record, 3/20/02, p. S2149)

"[T]he post-Watergate campaign finance law capped individual contributions to candidates, parties and PACs. These limits were put in place after the country learned a hard lesson about the corrupting influence of money in politics." (Sen. John Kerry, Congressional Record, 4/3/01, pp. S3334-6)

"[I]n the post-Watergate era, we recognized that it was time to prevent secret stashes of cash from infiltrating our political system. We succeeded in that effort, and I believe the system worked reasonably well for some time, until the recent phenomena of soft money and sham issue advocacy overtook the real limits we had established for our campaign system." (Sen. John Kerry, Congressional Record, 4/3/01, pp. S3334-6)

Introduction

The use of soft money to influence a federal election is a clear violation of long-standing campaign finance law. The coordination of election activities between third-party groups and campaign committees is a clear violation of law. Despite these legal prohibitions, John Kerry's campaign is now benefiting from the largest illegal infusion of soft money from wealthy individuals, unions, corporations and other special interests in the post-Watergate era, and his campaign has unlawfully coordinated its activities with those activities of shadowy third-party groups.

Democratic special interest groups have created an illegal conspiracy of so-called section 527 political committees with the stated intent of injecting more than \$300 million of banned soft money into the 2004 election for the purpose of defeating President Bush and electing John Kerry.¹ The sponsors of the recently enacted Bipartisan Campaign Finance Reform Act ("BCRA") have

¹ In addition, the 527 soft money organizations have pledged to work with some two dozen liberal 501(c) special interest groups that have announced they will spend approximately \$200 million more towards their own traditional political organizational efforts to defeat President Bush. The 501(c) organizations are named in this complaint solely because of their activities as part of the 527 soft money network and not for their legitimate membership and grassroots lobbying activities as permitted under the Internal Revenue Code provision governing 501(c) organizations.

described the activities of the soft money 527 political committees as a clear violation of law. Senator McCain recently declared in testimony before the United States Senate Rules Committee, "Use of soft money by 527 groups whose major purpose is to effect federal elections is not legal."²

Faced with the reality that neither the Democratic party nor its Presidential candidate would have the financial resources to meet their needs with "hard" federal dollars, former aides and allies of the Democratic nominee have created a series of related committees funded with "soft dollars." This shadow Democratic soft money slush fund has already begun airing television and other advertisements and initiated voter mobilization programs to defeat President Bush and elect Senator Kerry. The Kerry campaign and the Democratic party have admitted that they are unable to pay for these activities with permissible hard dollars raised according to the Federal Election Campaign Act, as amended by BCRA (collectively, "the Act"). Simply put, the Kerry campaign and the Democratic party have been unable to fundraise to a level of hard dollars that they think is necessary for their campaign efforts. Instead, they have chosen to rely on an illegal conspiracy of donors and shadowy groups to defeat President Bush.

Despite being a sponsor of the 2002 Reform Act, Senator Kerry is now the largest direct beneficiary of illegal soft money in history. This illegal soft money conspiracy features the spending of hundreds of millions of illegal soft dollars for the purpose of influencing a federal election, the refusal of the 527 committees to register properly with the Federal Election Commission ("FEC"), impermissibly interlocking personnel, illegally coordinated soft money television buys, and illegally coordinated soft money voter mobilization activities. All are designed to defeat President Bush and elect John Kerry.

The scheme begins with wealthy political activists with special interest agendas who knowingly and willfully give donations prohibited by federal law to the soft money Section 527

² Statement of Senator McCain, U S. Senate Committee on Rules and Administration, March 10, 2004.

political committees for the express purpose of "defeating President Bush." The 527 groups then directly assist John Kerry's campaign for president with advertisements and voter mobilization programs through illegal soft money and coordination. Each facet of this conspiracy is illegal in isolation from the other parts of this soft money conspiracy. The wealthy contributors, the 527 groups, John Kerry's campaign are each potentially subject to both civil sanctions and criminal penalties. Taken together, they constitute an unprecedented criminal enterprise designed to impermissibly affect a presidential election.

As detailed below, the coordinated effort to use prohibited "soft money" as a slush fund for John Kerry's campaign constitutes a knowing and willful violation of the Act. In order to preserve the fundamental integrity of the nation's campaign finance laws, action must be taken with unprecedented speed to stop the perversion of the nation's election laws by the illegal use of soft money. This illegal operation must be shut down before it is allowed to further influence the 2004 election and render the notion of "campaign finance reform" a fraud.

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Summary of Law and Violations

The soft money Section 527 organizations, soft money donors, the Kerry campaign and the Democratic party are knowingly and willfully violating numerous provisions of federal law. The perpetrators of these violations, the participants, and the beneficiary are subject to both civil sanctions and criminal penalties. The violations are:

First, the raising and spending of soft money by section 527 political committees for the express purpose of supporting John Kerry's campaign and defeating President Bush violates federal law because any expenditure for the purpose of influencing a federal election is subject to the limits and prohibitions of the Act. 2 USC §§ 441a and 441b. The organizers of these groups, the donors who knowingly and willfully made donations outside the limits of federal election law, and the beneficiaries of their activities are subject to penalties.

Second, the failure of soft money Section 527 organizations to register with the Federal Election Commission and their refusal to report their financial activities to the Federal Election Commission violate the disclosure provisions of federal law. 2 USC §§ 432, 433 and 434.

Finally, the 527 organizations' coordination of advertising and voter mobilization activities with John Kerry's campaign and the Democratic party is a violation of federal law. 2 USC § 441a.

The coordination is obvious from, among other facts, (1) how the media buys of the Kerry campaign are inextricably interwoven with the soft dollar buys from the 527s, which has allowed the Kerry effort to use illegal soft dollars to gain equal exposure with the Bush-Cheney hard dollar buy, and (2) the voter mobilization activities taken - and not taken - by the Democratic party structure. The structure of the illegal soft money network itself and the interlocking, dual relationships of the people involved make such illegal coordination inevitable.

Law

Under the Act, any entity that spends or raises more than \$1,000 in a calendar year³ “for the purpose of influencing any election for federal office”⁴ must register as a federal political committee with the Commission. Use of soft money by 527 groups for the purpose of influencing federal elections is a violation of the Act.⁵ These groups are required to operate under the contribution limits, source prohibitions and reporting requirements of the Act.

A committee airing ads or conducting voter mobilization activities aimed at influencing a federal election cannot select whether or not it is a federal political committee that must register - its actions determine its status under the law.⁶ This filing requirement is not self-selecting. By their very nature and activities, the 527 political committees named in this complaint exist to influence federal elections. As organizations whose “major purpose is the nomination or election of a candidate,” expenditures by these committees “can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related.”⁷

Those seeking to exert influence over federal officeholders and candidates, the Supreme Court predicted, would turn to political committees which exist for the express purpose of the influencing the election or defeat of federal officeholders. The Supreme Court noted, “federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties.”⁸

³ 2 U.S.C. § 431(4)

⁴ 2 U.S.C. § 431(9)(A)(i).

⁵ See, Statement of Senator John McCain, Senate Committee on Rules, March 10, 2004.

⁶ While BCRA did not change the threshold monetary amounts, it did broaden the standards applied in certain areas and the Supreme Court in December of 2003 affirmed this expansion. See 2 U.S.C. § 431(20)(A)(iii), 2 U.S.C. § 434(f)(3) and *McConnell v. FEC*, 540 U.S. ___, 124 S.Ct. 619 at 675 n. 64 (2003).

⁷ *Buckley v. Vago*, 424 U.S. 1, 79 (1976); see also *McConnell*, 124 St. Ct. at 678 n.67 (emphasizing that “section 527 political organizations are, unlike 501(c) groups, organized for the express purpose of engaging in partisan political activity.”)

⁸ *McConnell v. FEC*, 124 S.Ct. at 673.

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An "expenditure" under the Act "includes payments," 11 CFR § 100.110(a), "made by any person for the purpose of influencing any election for federal office." 11 CFR § 100.111(a). *Buckley v. Valeo*, 424 U.S. 1 at 44, held that this meant "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." The *Buckley* Court limited express advocacy to "magic words" such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject." *Id.* at fn. 52. The *McConnell* Court recently expanded the types of communications that are regulated by the Act holding that advertisements that "promote, support, attack or oppose" a clearly identified federal candidate "undoubtedly have a dramatic effect on federal elections" and can be regulated without violating the First Amendment. *McConnell*, 124 S.Ct. at 675.

At issue in this complaint is the meaning of "for the purpose of influencing any election for federal office." Prior to *McConnell v. FEC*, 540 U.S. ___, 124 S.Ct. 619 (2003), the lower courts had interpreted this phrase to mean communications that involved only "express advocacy" using *Buckley*'s "magic words." The lower courts had nearly universally understood this to be a constitutional limitation. But the *McConnell* Court ruled that, "the unmistakable lesson from the record in this [BCRA] litigation, as all three judges on the District Court agreed, is that *Buckley*'s magic-words requirement is functionally meaningless." *McConnell*, at 689.

Given this analysis by the majority, dissenting Justice Thomas noted, the holding in *McConnell* that the "express advocacy test" was no longer a constitutionally mandated limit meant that *McConnell* effectively overruled lower court decisions applying and upholding *Buckley*'s "express advocacy" standard. *McConnell*, 124 S.Ct. at 737 (Thomas, J., dissenting). See, e.g., *Clifton v. FEC*, 114 F.3d 1309, 1312 (CA1 1997); *Vermont Right to Life Comm., Inc. v. Sorrell*, 221 F.3d 376, 387 (CA2 2000); *FEC v. Christian Action Network, Inc.*, 110 F.3d 1049, 1064 (CA4 1997); *Chamber of Commerce v. Moore*, 288 F.3d 187, 193 (CA5 2000); *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 968-970

(CA8 1999); *Citizens for Responsible Govt. State Political Action Comm. v. Davidson*, 236 F.3d 1174, 1187 (CA10 2000); cf. *FEC v. Furgatch*, 807 F.2d 857, 862-863 (1987).

At the same time that the Supreme Court eschewed the express advocacy standard, it affirmed in the context of "federal election activity" that the test of "promote, oppose, attack, and support clearly set forth the confines [.] provides explicit standards for those who apply them and gives the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *McConnell*, at 675 n. 64 (internal quotations omitted). By adopting this standard, the *McConnell* Court expanded the reach of the Act beyond "express advocacy."

The Commission affirmed in February of this year that the Act required any communication which "promotes, supports, attacks or opposes" a federal candidate to fall under the "hard dollar" rules of the Act. AO 2003-37. The Commission, citing *McConnell*, at 675 n. 64 (2003), held that communications referring to a clearly identified federal candidate that promote, support, attack or oppose that candidate are for the purpose of influencing a federal election. "[C]ommunications that promote, support, attack or oppose a clearly identified Federal candidate" have a "dramatic effect" on federal elections. AO 2003-37, at 3.

In AO 2003-37, the Commission told Americans for a Better Country ("ABC"), a Section 527 organization, that it could not use donations from individuals in excess of the Act's limits or from prohibited sources for communications that "promote, support, attack or oppose" a candidate for federal office. AO 2003-37, at 9-10.⁹ AO 2003-37 reaffirmed the Act's threshold requirement as

⁹ The full text of the question and the FEC's answer follows:

3. You indicate that ABC may fund a communication that states: "President George W. Bush, Senator X and Representative Y have led the fight in Congress for a stronger defense and stronger economy. Call them and tell them to keep fighting for you." May ABC pay for this communication containing no express advocacy solely with donations from individuals that exceed the Act's limitations?

No. If the communication meets the criteria of an electioneering communication, it must be treated as an expenditure when made by a political committee. ...

to when a 527 organization becomes a federal committee by restating its long-standing requirement that any group that raises or spends more than \$1,000 for the purpose of influencing a federal election is required to register and become a federal committee.

In Advisory Opinion 2003-37, the Commission advised ABC that the section 527 committee could not solicit non-federal funds in fundraising communications that conveyed ABC's support or opposition to a specific federal candidate. AO 2003-37, p. 19-20. The Commission determined that 2 U.S.C. § 431(8) means that federal political committees can only raise funds using such solicitations if the funds are subject to the prohibitions and limitations of the Act.

In addition, the Commission found that communications for a 527 committee's voter identification, voter registration, or get-out-the-vote purposes that are not coordinated with a candidate and that do not refer to any federal candidate still must use federal funds in proportion to the number of federal and non-federal candidates on the piece or on the handout since the activities are for the purpose of influencing a federal election. See 11 C.F.R. § 106.1. The communications at issue here go much further.

The Commission has determined that soliciting soft money "by using the names of specific Federal candidates in a manner that will convey [its] plan to use those funds to support or oppose specific federal candidates..." constitutes an illegal contribution subject to the Act's contribution

Even if it does not have all the characteristics of an electoneering communication, it still must be treated as an expenditure and paid for entirely from ABC's Federal account for the following reasons. The communication you intend to produce would promote or support candidates for Federal office by proclaiming that those candidates have "led the fight in Congress for a stronger defense and stronger economy." As explained above in the introduction to the legal analysis, a payment for a communication that promotes, supports, attacks, or opposes a clearly identified Federal candidate is "for the purpose of influencing a Federal election" when made by a political committee and is therefore an "expenditure" within the meaning of 2 U.S.C. § 431(9) that must be paid for entirely with Federal funds. Moreover, there is no basis under 11 CFR § 106.1 for allocating the costs of this communication between ABC's Federal and non-Federal accounts, because the communication refers only to Federal candidates. Nor is allocation between ABC's Federal and non-Federal accounts permissible under 11 CFR § 106.6. Those allocation provisions explicitly do not cover candidate-specific communications. See 11 CFR § 106.6(b)(2)(i) and (iii). Consequently, because the payments for the communications you propose to run will be expenditures regulated under the Act, ABC must pay for these ads entirely with funds that comply with the Act's various limitations, including individual contribution limitations.

and source limitations. AO 2003-37, pp. 19-20. Such solicitations, the Commission determined, violate federal law. 2 U.S.C. § 431(8).

Coordination

Under the recently enacted Bipartisan Campaign Finance Reform Act, an expenditure becomes "coordinated" if each part of a 3-part test is met: the communication is paid for by someone other than the candidate, the candidate's committee, a political party or agent of any of the three and it satisfies the "content standard" and "conduct standards" set forth in Commission Regulations. 11 CFR § 109.21(a).

The "content standard" of 11 C.F.R. § 109.21(c) is satisfied when the communication is: 1) an "electioneering communication"; 2) the redistribution to the public of campaign material (with a few exceptions); 3) express advocacy of a clearly identified federal candidate; or 4) a "public communication" mentioning a political candidate distributed to the general public, 11 C.F.R. § 100.26.

The "conduct standard" is satisfied when the communication is: 1) made at the request or suggestion of the candidate, candidate's committee, political party committee or its agent; 2) the candidate, candidate's committee, political party committee or its agent are materially involved in certain decisions about the communication; 3) substantial discussions occur between the person paying for the communication or employees or agents of that person and the candidate, the candidate's committee, political party committee or agents; 4) made using a common vendor and the vendor uses or conveys information between the candidate or political party and the person paying for the communication; 5) made using a former employee of the candidate, candidate's committee or political party committee and information is used or conveyed to the person paying, or 6) redistribution of campaign material. 11 C.F.R. § 109.21(d).

The "former employee" standard was adopted by the Commission "to address what it

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understands to be Congress' primary concern, which is a situation in which a former employee of a candidate goes to work for a third party that pays for a communication that promotes or supports the former employer/candidate or attacks or opposes the former employer/candidate's opponent."¹⁰ This prong of the conduct test includes a temporal component requiring that the previous employment take place during the same election cycle as the current employment.¹¹ The Commission has explained that this "time limit establishes a clear boundary based on an existing definition and ensures that there is a clear link between the conveyance or use of the material information and the time period in which that material might be relevant."¹² Further, the Commission has held that to the extent that actions "result in a coordinated communication within the meaning of 11 CFR § 109.21, the payment for such communications would constitute an in-kind contribution to a candidate for Federal office or to a political party committee. Such contributions must be paid for entirely with Federal funds and are subject to...contribution limits under 2 U.S.C. § 441a(a)(1) or (2)." AO 2003-37.

¹⁰ Explanation and Justification, "Independent and Coordinated Expenditures," 68 F.R. 438, January 3, 2003.

¹¹ 11 C.F.R. § 109.21(d)(5)(i).

¹² Explanation and Justification, "Independent and Coordinated Expenditures," 68 F.R. 438, January 3, 2003.

Violations

Specifically, the soft money conspiracy of section 527 political committees - in effect, a shadow Democratic party taking over the role of the Democratic national party committees through the use of illegal funds - is knowingly and willfully violating the Act by:

- Raising and spending soft dollars from sources prohibited by the Act and in amounts in excess of the Act's limitations for the purpose, by the admission of the groups' organizers and their major donors, of defeating President Bush;
- Using these illegal soft dollars to pay for broadcast communications and voter mobilization activities all designed and executed for the purpose, by the groups' own admissions, of influencing a federal election;
- Refusing to register with and report to the Federal Election Commission despite meeting the plain statutory definition of "political committees" by virtue of their activities and stated purpose;
- Knowingly soliciting donors for contributions not permitted by the Act for the purpose of influencing a federal election through defeat of a federal candidate;
- Subjecting their soft money donors to knowing and willful violations by soliciting the donors for "soft money" contributions and the donors knew that their donations would be used to "defeat President Bush" and otherwise influence a federal election;
- Illegal "coordination" with the Kerry campaign through current party officials and former employees. This illegal coordination results in the activities of the "soft money" committees being illegal and prohibited contributions to the Kerry campaign. As detailed below, examples include a recent coordinated media buy between the Kerry campaign and MoveOn.org so that the organizations improperly pooled soft dollars to match a Bush-Cheney '04 hard dollar advertising buy violating 11 C.F.R. § 109.21.

As a result, this complaint is filed against all tentacles of the illegal Democratic soft money slush fund scheme, including the 527 entities, the individuals who have organized and managed this illegal soft money scheme as identified herein, and the donors to the groups who knew their contributions in excess of the limits and outside the prohibitions of federal law would be used to influence a federal election. Since all of these organizations and individuals have formed an alliance to defeat President Bush and interact regularly and admittedly coordinate with each other, if any part of the web illegally coordinates, the entire operation is operating illegally.

The principle beneficiary of this illegal infusion of soft money into the Presidential election is the John Kerry for President Committee, Inc. Kerry's committee has also violated the law by illegally coordinating various activities through individuals who are a part of this shadow soft money Democratic party and, therefore, accepting illegal contributions.

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Purpose Behind the Conspiracy

"Liberals Form Fund to Defeat President; Aim is to Spend \$75 Million for 2004"

"Labor, environmental and women's organizations, with strong backing from international financier George Soros, have joined forces behind a new political group that plans to spend an unprecedented \$75 million to mobilize voters to defeat President Bush in 2004." (Thomas B. Edsall, Washington Post, Aug. 8, 2003, p. 3)

"Foes of Bush Form PAC in Bid to Defeat Him"

"The leaders of five groups with strong ties to Democratic causes announced today that to help offset Republican advantages in organizing and fundraising, they were joining to form a political action committee aimed at defeating President Bush next year." (New York Times, Aug. 8, 2003)

From its inception,¹³ the defeat of President Bush in the 2004 federal election has been the purpose of the soft money conspiracy of organizations.

¹³ The *Washington Post* reported on May 25, 2003 "Major liberal organizations, from labor unions to civil rights groups, have begun to meet privately to develop a coordinated strategy to oppose President Bush's reelection in 2004. Their goal is to buttress the Democratic party and its nominee by orchestrating voter mobilization and independent media in as many as a dozen battleground states" Thomas B. Edsall, "Liberals Meeting To Set '04 Strategy," *The Washington Post*, May 25, 2003

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Donors have also admitted that they were solicited and gave soft money contributions illegal under the Act for the express purpose of defeating President Bush and influencing a federal election. Billionaire financier George Soros, who at the time had pledged \$12.5 million to shadow soft money organizations, has long championed an "open society" and reduced penalties for illegal drug possession. He has made no secret that his sole purpose in contributing is to defeat the President in the upcoming federal election, telling the Washington Post he would spend his entire \$7 billion fortune to defeat President Bush "if someone guaranteed" the outcome.²³ Soros also wrote: "I and a number of other wealthy Americans are contributing millions of dollars to grass-roots organizations engaged in the 2004 presidential election [MoveOn.org]. We are deeply concerned with the direction in which the Bush Administration is taking the United States and the world."²⁴ In Soros' own words, donors were giving illegal soft money contributions with the expressed purpose of defeating a federal candidate - a clear cut violation of the Act. *See also* Laura Blumenfeld, "Soros' Deep Pockets v. Bush," Washington Post, Nov. 11, 2003 ("For Soros, defeating Bush is the 'central focus' of his life and 'a matter of life and death'"); Associated Press, Aug. 8, 2003 ("Billionaire Commits \$10 M to Defeat Bush" - "President Bush is leading us in the wrong direction," Soros said in a written statement.

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²³ Laura Blumenfeld, "Soros' Deep Pockets Vs. Bush," *The Washington Post*, Nov. 11, 2003, *See also* Susan Milligan, "Soros Presses Anti-Bush Effort," *The Boston Globe*, March 22, 2004 ("I have made the rejection of the Bush doctrine the central project of my life for the next year and that is why I am ready to put my money where my mouth is.")

²⁴ George Soros, "Why I Gave," *Washington Post*, December 5, 2003, p. 31

Thus, the major (if not sole) purpose of all the groups and individuals named in this complaint is influencing a federal election through soft money 527 organizations and defeating a Presidential candidate. As such, they are violating the law by not operating under the hard money limits and source prohibitions of the Act, and by not registering their 527 committees with the FEC.

²⁵ Soros recruited fellow billionaire, Peter Lewis of Cleveland, to contribute to the soft money 527 organizations for the specific purpose of defeating President Bush

The Structure of the Soft Money Conspiracy

Faced with a new campaign finance law they feared put them at a disadvantage, veterans of Democratic presidential and congressional campaigns, including that of John Kerry's, have created a network of illegal soft money organizations whose actions are designed to improperly influence federal elections.

Funded by wealthy individuals and special interest groups who all wish to affect government policies for their favored agendas, this network of organizations has constructed an elaborate scheme to allow the unprecedented flow of illegal soft money to impact the 2004 Presidential and other federal elections. Aimed at taking over the hard dollar work of the national Democratic party structure, the 527s specific activities and publicly announced budgets include:

- a massive voter registration and mobilization drive budgeted at \$98 million in 17 battleground states among currently unregistered voters aimed at identifying and turning out only those who will vote against President Bush almost entirely funded with soft money;
- a soft money broadcast advertisement program budgeted at \$140 million designed to work in coordination with the limited resources of the Kerry campaign to use soft dollars to attack President Bush and match the all-hard dollar advertising effort of Bush-Cheney '04 and the Republican Party structure;
- an organizing group (budgeted at \$3 million) funded with soft money to control the \$250 million anti-Bush and pro-Kerry broadcast advertising and voter mobilization efforts of two dozen special interest groups;²⁶

²⁶ Lorraine Woellert, "The Evolution Of Campaign Finance?" *BusinessWeek*, September 15, 2003, p. 62

• soft dollar 527 political committees with a combined budget of \$37 million whose purpose is to register and turn out minority voters to vote against President Bush and for Senator Kerry and;

• soft money Spanish-language TV ads budgeted at \$12 million designed to influence the Presidential election with anti-Bush and pro-Kerry messages.

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Groups Composing the Illegal Soft Money Conspiracy

At the center of carrying out this soft money conspiracy are 527 political committees
and service entities that control the activities of the others.

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Other Groups

Several other section 527 committees are coordinating their illegal soft money activities as part of the shadow Democratic soft money slush fund.

MoveOn.org: This organization, which has a federal committee registered with the FEC, has illegally used its non-federal account to pay for extensive ad buys.⁴⁰ Each of its ads is designed to

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⁴⁰ MoveOn.org fits squarely under FEC Advisory Opinion 2003-37 to Americans for a Better Country, and as such is knowingly and willfully refusing to conduct all its activities designed to influence a federal election from its federal account. Its use of its soft money 527 committee to air its ads directly contradicts the holding of AO 2003-37

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"attack or oppose" President Bush,⁴¹ and therefore constitutes illegal expenditures of soft dollars in an attempt to influence a federal election. Estimates of the amount of time actually bought vary, but appear to be about \$10 million,⁴² including a recent nationwide buy coordinated with simultaneous buys by the Kerry campaign and the Media Fund. In addition, MoveOn.org has made no secret of its ongoing communications with Democratic party officials⁴³ and the elected Democratic leadership in the Senate and House.⁴⁴ The Kerry campaign website even lists events such as an "East Bay for Kerry / MoveOn.org House Party" attended by Teresa Heinz-Kerry (in person) and John Kerry (who participated by conference call).

⁴¹ MoveOn.org Voter Fund "Strategy" Memo "Our Objective Is To Challenge George Bush's Policies And Record In Order To Reduce Support For His Re-Election In 2004" (MoveOn.org Voter Fund Website, <http://www.moveonvoterfund.org/strategy.html>, Accessed March 10, 2004), See Beth Fouhy, "MoveOn.org Becomes Anti-Bush Online Powerhouse," *The Associated Press*, Jan 10, 2004 ("MoveOn.org Running "\$15 Million Advertising Campaign To Defeat President Bush" "MoveOn is now poised to be one of the Democrats' most effective fundraising vehicles during this year's presidential campaign. It has already raised millions to support candidates and fund ads such as the one criticizing Bush's \$87 billion commitment to rebuilding Iraq.

⁴² Chuck Raasch, "Liberal Group Running New Anti-Bush Ads In 5 Swing States," *Gannett News Service*, Dec 3, 2003 ("The ads are part of what MoveOn.org says will be at least a \$15 million campaign stretching into March ... MoveOn.org is financed in part by a \$5 million pledge from billionaire George Soros and insurance magnate Peter Lewis.

MoveOn.org Voter Fund Has Spent Over \$9 Million On Anti-Bush Ads Since November 2003. "MoveOn, the left-leaning activist group, said on Wednesday that it would start another round of advertising against President Bush this week, bringing to more than \$9 million the amount it says it has spent since November on television commercials attacking Mr. Bush" (Jim Rutenberg, "Activist Group Plans New Ads Attacking Bush In Swing States," *The New York Times*, February 12, 2004)

⁴³ David Jackson, "Internet Group Mobilizes Broad Base For Political Activism," *The Dallas Morning News*, Oct. 26, 2003 ("MoveOn officials have talked to a variety of party officials about organizing and fund-raising next year")

⁴⁴ John Cochran, "Internet-Based Activist Group Puts Powerful Span On Politics," *CQ Weekly*, Oct. 3, 2003 ("A day or so later, Senate Democrats announced that they had invited Boyd to lunch on Capitol Hill on Sept 18. Hurricane Isabel forced them to cancel the date, but they intend to reschedule. . . House Democrats also have taken note Rep. Robert T. Matsui of California, chairman of the Democratic Congressional Campaign Committee, and Minority Leader Nancy Pelosi of California were among several House Democrats who met with MoveOn in June. What they see is a potential ally that could help them move votes and frame issues - as well as a template for the party's own organizing activities.")

⁴⁵ Balz and Edsall, "Democrats Forming Parallel Campaign," *Washington Post*, March 10, 2004, p.A1, see also Frank Davies, "New" Democrats Seek Hispanic Vote with Ads," *The Miami Herald*, Dec 3, 2003.

Environment 2004: Former Clinton Administration officials have formed a soft money 527 group in the belief that "Bush's approach to logging, protection of endangered species, air and water pollution, toxic waste and global warming will be decisive campaign issues next year in swing states." The group is headed by Carol Browner, who served as Administrator of the EPA under President Clinton.⁴⁷ The group's email solicitation demonstrates that its purpose is influencing a federal election: "As the Democratic Party closes in on selecting its nominee, the 2004 Presidential election will enter a critical new phase. The primaries have given the Democratic contenders a lot of media attention, but they have been expensive, draining the finances of all the candidates. Meanwhile, Bush/Cheney '04 has raised over \$131 million to spend entirely on defeating the Democratic nominee. ... We are beginning our campaign in New Hampshire, using the same successful model we employed in our Florida launch. ... New Hampshire is a critical state. In 2000, Democrat Al Gore lost the state by a mere 7,211 votes. With your help, we can reach important swing voters and make the difference in 2004."⁴⁸

⁴⁶⁴⁷ Scott Maben, "Anti-Bush Effort Coming to Lobby Oregon Voters, Environmentalists," *Eugene Register Guard*, Oct. 23, 2003; See IRS Form 8871 for "Environment2004" included in Attachment H.⁴⁸ Environment 2004 email, February 26, 2004 (included in Attachment H).

Individual Participants in the Soft Money Conspiracy

"If somehow 'coordination' with the party becomes a wink and a nod, it would render our efforts really meaningless," says Senator Russ Feingold (D-Wis.), who sponsored reform legislation with Senator John McCain (R-Ariz.)

BusinessWeek, Sept. 15, 2003

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This complaint outlines a conspiracy where the individuals who have organized and managed this illegal soft money scheme and the donors to the groups who knew that their excessive or prohibited contributions would be used to defeat President Bush, have knowingly and willfully violated federal election law. Since all of these 527 organizations have formed an alliance to defeat President Bush, interact regularly and admit they coordinate with each other, if any part of the web illegally coordinates, the entire operation is operating illegally.

The ties between the leaders of the shadow web organizations, the Kerry campaign, the Democratic National Committee and the Democratic senatorial and congressional committees run deep - as deep as their commitment to defeat President Bush.

⁴⁹ The interlocking leadership among the soft money 527 organizations includes ties that demonstrate impermissible coordination with the Kerry campaign and the Democratic party, and demands immediate action. See 11 C.F.R. § 109.21. This apparent coordination renders all of the soft money spent to influence the Presidential election an excessive and prohibited contribution to Kerry for President.

The principle beneficiary of this illegal infusion of soft money into the Presidential election is John Kerry and John Kerry for President, Inc. Kerry's committee has also violated the law by illegally coordinating various activities with individuals who are a part of the web.

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- Eli Pariser - key staff member for MoveOn.org who has simultaneously participated in supposedly independent broadcast advertisements attacking and opposing President Bush as part of the soft money 527 shadow scheme while at the same time writing fundraising letters directly for the John Kerry for President campaign.⁶² He is also the "campaign director" for MoveOn.org Voter Fund, the soft money 527 organization that is running the broadcast ads.⁶³

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⁶² John Mercuno, "Money Matters As Race Gets Under Way," *CNN.com*, March 4, 2004 ("Some help is coming from two major, if predictable, groups - the Democratic National Committee and the MoveOn.org political action committee - which are firing off separate fund-raising letters on Kerry's behalf to as many as 4 million donors. ... The big question is whether Kerry will have the resources in this key moment to powerfully respond to the Republican attacks and present his positive vision for our country," [MoveOn.org's Eli] Pariser wrote in his fund-raising appeal. "Together, we can answer this question. If you've been holding off on contributing to a presidential campaign, now's the time to jump in. We have a Democratic nominee, and he needs our support today.")

⁶³ See MoveOn.org Voter Fund, "MoveOn.org Voter Fund Calls For Justice Dept. Investigation Of Administration's Illegal Use Of Government Funds For Bush 'Re-Election Ads,'" Press Release, <http://www.moveonvoterfund.org/cbsrelease.html>, Feb 26, 2004.

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Donors to the Soft Money Conspiracy: Special Interests' Soft Money Funding

The common trait among the shadow soft money network's financial supporters is that each individual or organization has a special interest agenda that it wants to enact, and that is opposed by the Bush Administration. The shadow 527s use of illegal soft money for the purpose of influencing a federal election is precisely what the Act prohibits. The notion that BCRA has somehow broken the "link to elected officials" and that the "pressure to give has greatly diminished" is belied by reality.⁶⁴

The financial supporters of the Democratic shadow web organizations have all been quite vocal in publicizing the soft money scheme. John Kerry and all Democratic candidates and officials are aware of their role through, at the least, media reports.⁶⁵ The shadow network's visible support for Kerry's candidacy will place these financial supporters and their special interest agenda in a position to exert as much influence on administration and congressional policies should their efforts to influence a federal election succeed as any party soft money donor ever could. This is exactly the type of large donations from wealthy individuals which occurred during the Watergate era that resulted in the passage of the original Federal Election Campaign Act and the recently enacted BCRA.

The simple truth is that special interests - from wealthy individuals who want to weaken anti-drug laws (Soros, Lewis)⁶⁶ to anti-war groups (MoveOn.org)

to anti-business environmentalist groups (League of

Conservation Voters

⁶⁴ Cf. Thomas E. Mann and Norman Ornstein, "So Far, So Good on Campaign Finance Reform," *Washington Post*, March 1, 2004.

⁶⁵ Several Democrat Members of the House and Senate indicated publicly that they are well aware of the activities of these soft money 527 organizations. See February 12, 2004 letter from Senator Daschle, et. al., to the Commission and February 10, 2004 letter from Representative Pelosi, et. al., to the Commission, attached hereto as Attachment I.

⁶⁶ "527 Update Peter Lewis and the Marijuana Policy Project," Center for Responsive Politics, www.opensecrets.org (visited March 16, 2004), "Soros, Lewis Push Campaign Law Limits in Effort to Defeat Bush," Bloomberg News Service, Oct. 28, 2003, Paul Crespo, "Big-money radicals give to Democrats," *Miami Herald*, Dec. 10, 2003, John K. Careisle, "George Soros' Plan to Defeat George Bush," *Human Events*, March 1, 2004

Through an active public relations operation headed by former Kerry campaign manager Jim Jordan, this coalition of liberal special interest groups and wealthy individuals - each with a policy agenda it wishes to enact - has made it well known to Kerry and all Democratic candidates that they are spending vast amounts of soft money to aid the electoral efforts of John Kerry and other Democratic candidates. The claim that BCRA has somehow broken the chain between federal candidates and soft money special interest groups is belied daily by news of yet more special interest group soft money activities on behalf of Kerry's campaign, and against the President's campaign.

Activities of the Soft Money Conspiracy

According to numerous newspaper accounts,

MoveOn.org,

are using illegal soft money to pay for broadcast messages designed to impact the Presidential election. These groups are using illegal soft money to fund their advertising campaign and are illegally coordinating their efforts with the Kerry campaign.⁶⁸ In addition, the soft money organizations that comprise the conspiracy are making an illegal soft money contribution to the Kerry campaign by conducting voter mobilization and registration activity designed to impact a federal election with illegal soft money and without properly registering with the Commission as political committees. As is clear from numerous press reports, the activities of and the other soft money registration and turnout committees are designed to use illegal soft money to improperly influence a federal election through the defeat of President Bush. As such, they should be registered as federal political committees with the FEC.⁶⁹

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recruited pledges of \$50,000 each from

MoveOn.org,

League of Conservation Voters,

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Based on media reports the shadow Democratic party soft money slush fund operates as follows:

⁷², the shadow organizations run their operations. The mission of the web is to bring together major supporters of liberal issues and causes, including unions, as detailed above, to form groups that will run broadcast communications and mobilize voters through voter

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registration and GOTV efforts to defeat President Bush and to aid the Democratic nominee and other Democratic candidates.

Its communications - both for fundraising and political purposes - use the name of President Bush, and in some instances Senator Kerry. Most contain express advocacy. All solicitations make clear that all funds raised will be used to defeat President Bush at the polls in an effort to discontinue his policies. Similarly, the voter registration messages in its door-to-door operations urge people to register in order to vote to defeat President Bush. And its television communications,

an expression of express advocacy that is a direct exhortation to take action that could only be taken at an election.⁷³

That the web of organizations is specifically accepting soft money contributions to defeat President Bush is clear from the contributions involving George Soros. Soros, in explaining his contributions to . . . MoveOn.org, candidly said: "Defeating George Bush is the central focus of my life."⁷⁴ In addition, Soros has been involved in contributing directly to Kerry's presidential campaign and those of several of his rivals.⁷⁵

Armed with the largest infusion of illegal soft money since the Watergate era, the Democrats' shadow soft money slush fund network has devised a plan to spend upwards of \$300 million through entities that should be registered as federal political committees subject to the hard money contribution limitations and source restrictions of the federal election laws to impact the 2004 federal elections, especially the Presidential contest. These groups are also coordinating

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⁷⁵ Laura Blumenfield, "Soros's Deep Pockets vs. Bush," *Washington Post*, Nov. 11, 2003.

improperly with the purpose of defeating President Bush, electing Senator Kerry and influencing federal elections through soft money broadcast advertisements and voter mobilization activities.

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Donors to the Soft Money 527 Scheme Committed Knowing and Willful Violations By Giving Contributions They Knew to be Outside the Federal Limits for the Purpose of Defeating President Bush.

The list of donors whose contributions to the soft money 527 organizations were illegal under the Act's contribution limits and source prohibitions

donors knew that their contributions were not permitted under federal law but would be used for the purpose of electing or defeating a federal candidate.

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Legal Analysis: Coordination

John Kerry For President Accepted An Illegal Soft Money Contribution From MoveOn.Org By Illegally Coordinating Their March 10-19 Television Buys In Violation Of 11 C.F.R. § 109.21.

A cursory review of the \$5.1 million combined television buy of John Kerry for President, MoveOn.org in early and mid-March demonstrates that Kerry accepted, and MoveOn.org made, a prohibited soft money contribution by illegally coordinating their joint media buy.¹⁰⁷

These buys ran in the battleground states from March 10 to March 19 and coincided with all-hard dollar Bush-Cheney '04 buys. MoveOn.org used illegal soft dollars to purchase their shares of the buy that benefited the Kerry campaign, through ads that "attacked" and "opposed" President Bush. As such they constituted prohibited contributions to the Kerry campaign. Even if Moveon.org had used all hard dollars to purchase time, these buys would still have been excessive contributions under 11 C.F.R. § 109.21 since they were illegally coordinated.

The cash strapped Kerry campaign, faced with a broader Bush-Cheney '04 buy paid for entirely with funds raised under the limits and prohibitions of the Act, turned to the Democratic soft money groups. Bush-Cheney '04 began advertising on television in 80 markets on March 4. Between March 10 and March 13, John Kerry for President, and MoveOn.org placed advertising in 53 of these 80 markets.

An analysis of the television buy data of John Kerry for President, MoveOn.org indicates the level of coordination among and between the soft money shadow groups and the Kerry campaign in their effort to defeat President Bush. As the chart below demonstrates,

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there is near perfect uniformity in markets that the three groups decided to buy - and not buy. In other words, wherever one went the others were sure to go in an effort to use soft dollars to counter a hard dollar Bush-Cheney '04 buy.

There was an overlap in 38 of 39 markets (97.5%) in which the groups bought time. Under this coordinated system, the shadow groups and Kerry campaign decided to advertise in the markets they determined were key to the Kerry vote. The groups determined not to try to match the Bush-Cheney '04 buy in every market, but only in some. Under their system, MoveOn.org bought time, and two to three days later the Kerry campaign came in and bought the remaining time the entities pre-determined were needed.

A breakdown of the parties' overlapping buys shows that MoveOn.org advertised in only 14 markets where Kerry did not buy. Furthermore:

- MoveOn.org advertised in only 9 non-Kerry markets as part of their most recent buys
-
- MoveOn.org alone advertised in only 1 non-Kerry market as part of its most recent buy.

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soft money committees and John Kerry for President also divided up the day parts in a coordinated effort to have an anti-Bush/pro-Kerry message from one of the groups on the air to counter Bush-Cheney '04 in their selected markets.¹⁰⁸ This strategy of dividing up the buys in markets key to them allowed Kerry and the soft money groups to stretch their individual buys in an attempt to counter the Bush-Cheney '04 buy.

To counter the Bush-Cheney '04 hard dollar buy, John Kerry for President spent only \$1,994,290 in hard dollars; and MoveOn.org spent \$1,185,132 in illegal soft dollars to air messages which either attacked or opposed President Bush or promoted or supported John Kerry. As a communication which mentioned only federal candidates from groups whose stated purpose is to defeat the President, MoveOn.org ads should have been paid for with all hard dollars and not coordinated.

MoveOn.org are political committees and their ads promote, support, attack or oppose a clearly identified federal candidate for, by their own admission, the purpose of

¹⁰⁸ Source: New York Times, March 27, 2004

influencing a federal election they were required, but failed, to use hard dollars. See AO 2003-37 at 9.

Under BCRA's coordination rules, it does not matter if the coordinated buy was the product of an overall agreed upon system for buying time, or the transference of plans and needs about this specific buy. The self-evident truth is that coordination occurred to enable the Kerry campaign to stretch its scarce hard dollars by having to buy only a portion of the market, while the soft dollar

MoveOn.org (by their own admission working with each other to avoid duplication) paid for the rest of the anti-Bush/pro-Kerry messaging in other coordinated markets. This pattern of dividing up the time was replicated in state after state for this buy.

The totality of the buy orchestrated by John Kerry for President, MoveOn.org constitutes a per se violation of 11 C.F.R. § 109.21.

The Various Roles of the Individuals Involved Demonstrates a Willful Disregard for the Law and Constitutes Per Se Coordination.

In addition to using illegal soft money to influence a federal election and refusing to register as a political committees with the FEC, the interlocking relationships among the John Kerry for President Committee, the illegal 527 soft money organizations and the Democratic party provide blatant examples of impermissible coordination that renders most of the 527 groups' activities illegal contributions to the Kerry campaign. While former Kerry campaign manager Jim Jordan provides the most visible example, there are numerous other relationships that violate BCRA's coordination regulations, as demonstrated below. See 11 C.F.R. § 109.21.¹⁰⁹

Under the coordination test implemented as a result of BCRA, if the payment and content standards are met, the existence of former employees is among the tests that satisfy the "conduct" prong. To satisfy the "former employee" standard of 11 C.F.R. § 109.21(d)(5): (1) the communication by the 527 organization must be paid for by the employer of the person who used to work for the candidate (here Kerry's campaign) or a political party or an agent of either during "the current election cycle," and (2) that former employee "uses or conveys" to the entity paying for the communication information about the identified candidate's (here Kerry's) "plans, projects, activities, or needs, ... or a political party committee's campaign plans, projects, activities, or needs" or "information used by the former employee in providing services to the candidate (or campaign) who is clearly identified in the communication ... is material to the creation, production, or distribution of the communication."

Under this tough standard, if any of the others named above used any information they learned while working for Kerry or the Democratic party in any way for the soft money groups the conduct standard is met. It is virtually impossible for someone

¹⁰⁹ See pp 51-61

to not meet this standard given that the information that they learned while working for the candidate or Party is intertwined with what they are doing for the soft money groups.

This is precisely what the other soft money 527s are doing in their individual communications and activities. What is clear is that the shadow Democratic network of soft money 527s are doing precisely what the Kerry campaign needs them to do on a daily basis.

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- **MoveOn.org is simultaneously airing soft dollar issue ads that promote, attack, support or oppose a federal candidate, and sending out fundraising mail for the John Kerry for President campaign. Any contacts between the two while engaging in the different roles that transfers any political plans, needs, projects or activities of the other is a violation of FEC regulations. MoveOn.org's compliance is problematic since Eli Pariser, as noted above, is charge of both the hard dollar and soft money activities of MoveOn.org. In addition, MoveOn.org is claiming its broadcast ads are "independent" of the Kerry campaign, while at the same time hosting joint Kerry/MoveOn.org "House Parties."¹¹⁵**

¹¹⁵ See p 25 and Attachment G

Legal Analysis: Other Soft Money Violations

League of Conservation Voter's Express Advocacy of John Kerry's Candidacy With Illegal Soft Money Constitutes A Prohibited Corporate Expenditure

As the Supreme Court detailed in *McConnell v. FEC*, 540 U.S. ___, 124 S.Ct. 619 (2003), there are long-standing prohibitions on corporate expenditures and they have been upheld repeatedly. The League of Conservation Voters ("LCV") is a corporation not registered as a political committee with the FEC and, as a result, LCV is prohibited from making expenditures within the meaning of the Act. While it may try to claim an exclusion under "MCFL," contributions from an incorporated entity such as a foundation would permanently taint LCV's eligibility for a "MCFL" exemption.

LCV's enclosed advertisement is express advocacy under the Act, both before and after passage of BCRA. The ad refers to two clearly identified candidates for federal office, George Bush and John Kerry. The ad, when viewed "by a person of ordinary intelligence" *McConnell* at 675, n. 64, is clearly express advocacy of John Kerry's candidacy. The ad opens with the following audio: "In the race for President, there's only one candidate who can take on President Bush...."¹¹⁶ Further into the ad, the announcer says, "To beat him...the Democrat with the best record...John Kerry."¹¹⁷ Under both the original and new tests for express advocacy set forth by the Supreme Court, this advertisement constitutes express advocacy paid for in part with corporate funds from the numerous foundations.

¹¹⁶ See enclosed CD-ROM of advertisement from the start until 5 seconds into the ad.

¹¹⁷ See enclosed CD-ROM of advertisement from 0:20 through 0:26.

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Relief Sought

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The activities of the various groups and individuals described in this complaint demonstrate a massive conspiracy to corrupt the federal campaign finance system, a finance system mandated by the 2002 Bipartisan Campaign Reform Act amendments and constitutionally sanctioned by the Supreme Court in *McConnell v. FEC*. These groups and individuals have conspired to circumvent the law by creating a network of newly formed 527 political organizations working in complicity with other long established special interest groups and wealthy individuals to illegally raise and spend soft money, and coordinating their efforts, all with the express purpose of defeating President Bush. This massive ongoing effort has resulted in numerous violations of the Act including 2 USC §§ 432, 433, and 434, by failing to establish, register and report as federal political committees by some, and 2 USC §§ 441a and 441b by making or receiving excessive and/or prohibited contributions by all.

These illegal activities are ongoing. It is clear from their own statements that these special interest groups and individuals will not stop their illegal efforts, regardless of what deliberative action the FEC might take. Even if the Commission were to expedite its proceedings, the administrative process required under the Act insures that no final action by the FEC would be timely and before the conclusion of this presidential election cycle under these circumstances. (see 2 USC § 437g (a)). No penalty, civil or criminal, after the fact could possibly remedy the irreparable harm caused by allowing this illegal activity to continue unabated. These individuals and groups understand and appreciate that fact. Allowing this activity to continue would effectively destroy and make meaningless the campaign finance system mandated by Congress in 2002 and would further add to the cynicism of the American electorate regarding the FEC's regulation of illegal money in politics.

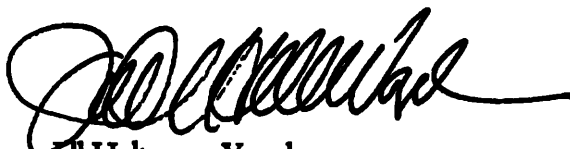
Because these special interest groups and individuals remain defiant and because the Commission's own legally mandated process will not result in a timely resolution of this complaint,

we respectfully request and urge the Federal Election Commission to dismiss this complaint at its next Executive Session meeting, in order to allow the complainants to immediately seek relief in the Federal District Court for the District of Columbia. Such responsible final action by the Commission would legally allow Complainants to seek an immediate judicial remedy. 2 UCS § 437g(a)(8). This action by the Commission would be unprecedented, but the matter before the FEC is unprecedented. In this unique circumstance the Complainants respectfully submit that the Commission should take this unprecedented action which is, in our view, the only available responsible action, and dismiss this complaint allowing for immediate judicial review. We respectfully submit that the Commission's mandate to enforce the Federal Election Campaign Act demands such extraordinary action.

Respectfully Submitted,



Thomas J. Josefiak
General Counsel
Bush-Cheney '04, Inc.



Jill Holtzman Vogel
Chief Counsel
Republican National Committee

Verification

Jill Holtzman Vogel, hereby verifies that the statements made in the above complaint are, upon information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.


Jill Holtzman Vogel

District of Columbia

The foregoing instrument was subscribed and sworn
before me this 31 day of March, 2004 by

Jill Holtzman Vogel


Notary Public

My commission expires July 31, 2007

HANNAH B. THRUSH
NOTARY PUBLIC DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JULY 31, 2007

Thomas J. Josefiak, hereby verifies that the statements made in the above complaint are, upon information and belief, true.


Sworn to pursuant to 18 U.S.C. § 1001.


Thomas J. Josefiak

County of Arlington
Commonwealth of Virginia

The foregoing instrument was subscribed and sworn
before me this 31 day of March, 2004 by

Thomas J. Josefiak


Notary Public

My commission expires July 31, 2007

HANNAH B. THRUSH
NOTARY PUBLIC DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JULY 31, 2007

Attachment A

27044164094

**Statement of Senator John McCain, Senate Committee on Rules
Wednesday, March 10, 2004**

In its recent opinion in *McConnell v. FEC*, the Supreme Court wisely noted that money, like water, is going to seek a way to leak back into the system. We already see that. Now that the parties have been taken out of the soft money business, there are efforts by political operators to redirect some of that money to groups that operate as political organizations under Section 527 of the IRS Code, or so-called "Section 527" groups.

The game is the same: these groups are raising huge corporate and union contributions, and multi-million dollar donations from wealthy individuals, and want to spend that money on so-called "issue" ads that promote or attack federal candidates, and voter mobilization efforts intended to influence federal elections.

The tax laws say that a 527 group is a "political organization" that is organized and operated primarily for the purpose of influencing the election of candidates.

In other words, any 527 group is by definition in the business of political campaigns, and it has voluntarily sought the tax advantages conferred on political groups. But these groups should not then be permitted to shirk their other obligations, including those under the campaign finance laws.

Use of soft money by 527 groups whose major purpose is to effect federal elections is not legal. This is not a matter of the Reform Act of 2002; it is a fundamental rule of federal election law since 1974. That law, as construed by the Supreme Court in *Buckley v. Valeo*, requires any group that has a "major purpose" to influence federal elections, and spends \$1,000 or more to do so, to register with the Federal Election Commission as a "political committee," and be subject to the contribution limits, source prohibitions and reporting requirements that apply to all political committees.

That 527s have been allowed for years by the FEC to operate outside of the law is not surprising. In *McConnell*, the Supreme Court stated, in no uncertain terms, how we ended up in the soft money crisis to begin with. The Justices placed the blame squarely at the doors of the FEC, concluding that the agency had eroded the prohibitions on union and corporate spending through years of bad rulings and rulemakings, including its formulas for allocation of party expenses between federal and non-federal accounts.

The Supreme Court stated in *McConnell* that the FEC had "subverted" the law, issued regulations that "permitted more than Congress . . . had ever intended", and, with its allocation regime, "invited widespread circumvention of FECA's limits on contributions."

What we need today is for the FEC to enforce the law the way it should be enforced. This is what the FEC rulemaking is about. The FEC has been wrong with respect to its treatment of 527s for years, and the agency needs to get its house in order fast, and make clear that a section 527 group - a group that has voluntarily identified itself for tax law benefits as a "political organization" -

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must comply with the federal election laws when its major purpose is to influence federal elections.

Section 527 groups need to play by the rules that all other political committees are bound by, the rules that Congress has enacted to protect the integrity of our political process - they need to raise and spend money that complies with federal contribution limits and source prohibitions for ads they run that promote or attack federal candidates or otherwise have the purpose to influence federal elections, and they need to spend federal funds for voter mobilization activities that are conducted on a partisan basis and are intended to influence federal elections. Just like every other political committee.

Let me also say that the FEC in this rulemaking must change its absurd allocation rules. Under these rules, a committee that wants to manipulate the law can arrange its activities to spend 100 percent soft money for voter drive efforts that obviously are for the purpose of influencing federal elections. Indeed, one of the 527 groups operating today - America Coming Together, or ACT - has made overwhelmingly clear that its principle purpose is to defeat President Bush. Yet ACT recently filed a report with the FEC in which it claims that under the Commission's existing allocation rules, it can fund its voter drive activities with 98 percent soft money. This is ridiculous, and it makes a mockery of the law. The Commission needs to put some teeth in its allocation rules, now.

But many other organizations, although politically active, do not have partisan politics as their primary purpose. Section 501(c) groups, for instance, are prohibited by the tax laws from having a primary purpose to influence elections. These groups thus operate under different rules, and appropriately so.

Section 501(c) groups can - and should - engage in nonpartisan voter mobilization activities without restriction. And under existing tax laws, Section 501(c) groups - unlike section 527 groups - cannot have a major purpose to influence federal elections, and therefore are not required to register as federal political committees, as long as they comply with their tax law requirements. Much of the public controversy surrounding the FEC's rulemaking stems from a failure to understand these simple distinctions.

It's tempting to see everything that is done in campaign finance reform through a partisan lens. And sometimes, it's true that things are done with partisan ends in mind. But we all need to remember that what may seem, in the middle of an election, to be in the short-term political interest of one party is not necessarily a good thing in the long run - even for that party.

I note that FEC Vice-Chair Ellen Weintraub opposed a rulemaking on 527 activity at this time, saying "at this stage in the election cycle, it is unprecedented for the FEC to contemplate changes to the very definitions of terms as fundamental as 'expenditure' and 'political committee' . . . sowing uncertainty during an election year." Weintraub stated, "I will not be rushed to make hasty decisions, with far-reaching implications, at the behest of those who see in our hurried action their short-term political gain."

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In fact, what the FEC needs to do now is simply enforce existing federal election law as written by Congress in 1974 and interpreted by the Supreme Court in 1976. It defies the whole purpose of the FEC to say that it should not enforce this law in the middle of an election year because such enforcement might effect that election. The fact that the FEC has neglected to enforce the law correctly for the last several years because it erroneously interpreted the rules for 527s is not a reason for the Commission's continued failure to enforce it now that the Supreme Court has made it clear in McConnell that they should do so.

One of the problems the FEC faces today is that Commissioners refuse to acknowledge even the Supreme Court's authority in this area. FEC Chairman Brad Smith's response to the McConnell decision was to say: "Now and then the Supreme Court issues a decision that cries out to the public, 'We don't know what we're doing!' McConnell is such a decision." What an extraordinary statement from a public official whose statutory responsibility is to enforce the laws of the land as written by Congress, signed by the President, and upheld by the Supreme Court!

Mr. Chairman, it is statements like this that point out the need for fundamental reform of the FEC. I hope this Committee will hold hearings on the legislation that Senator Feingold and I have introduced to do this. The FEC's current difficulty in dealing with an issue as straightforward as these 527 organizations spending soft money in the 2004 federal elections, and the 3-3 ties at the Commission when it recently considered an advisory opinion on this issue, are only the most recent examples of the need for FEC reform.

While FEC Vice-Chairman Weintraub spoke about her concern that the 527 issue was being raised for "short-term political gain", I trust no one will suggest that my position in this hearing is so motivated. The Chairman certainly knows of the many occasions where I have been accused of neglecting partisan interests. My dedication to the cause of campaign finance reform goes back many years and will extend far beyond the current election cycle. The same may of course be said of my colleague, Russ Feingold, who joins me here today.

We believe the FEC needs to do what is right, which is to ensure that both the Federal Election Campaign Act of 1974 and the Bipartisan Campaign Reform Act of 2002, are fully enforced. I welcome recent efforts by the Republican National Committee to encourage enforcement of the law regarding 527 federal political activities. Support for enforcement is welcome no matter the reasons for it. Just as some former opponents of campaign reform now favor enforcement actions by the FEC, some of those who in the past urged enforcement of the law have suddenly changed their tune. Let me read you a portion of a letter sent to the Department of Justice asking for a criminal investigation of a 527 group which was proposing to run issue advertising and conduct voter registration for the purpose of affecting federal elections and which had failed to register with the FEC as a federal political committee.

[It has] begun to raise \$25 million so that this group can finance issue advocacy advertisements and get-out-the-vote activities. This organization plans to finance these activities from donations raised outside of the Federal Election Campaign Act's ("FECA" or the "Act") source limitations and amount restrictions, and without regard to the FECA's registration and reporting requirements. The result is an organization that is claiming tax-exempt status as a "political

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organization" under Section 527 of the Internal Revenue Code, but which is willfully refusing registration and reporting expenditures and contributions received.

This letter came from Democratic election law attorney Bob Bauer and his law firm Perkins Coie in 1998, objecting to a 527 created by Congressman Tom Delay. I agree with Mr. Bauer's analysis of federal election law relating to 527s and federal political committees as stated in this letter. Unfortunately, Mr. Bauer and his law firm are now representing 527s who want to engage in the sort of activity which they argued only a few years ago was "illegal" and required criminal investigation. [Letter in record]

What this letter proves is that it is foolish for anyone-including Members of Congress or Commissioners of the FEC-- to make decisions on enforcing the election laws based on perceptions of short-term, inherently changeable, partisan considerations. Instead, precisely because partisan calculations change over time, and then change again, the only appropriate basis for interpreting the law in this area is the statutes themselves, and the principle of keeping corporate and labor funds out of federal elections.

With the Bipartisan Campaign Reform Act, we showed our constituents, in a bipartisan way, that we care about making sure that they have the political power in this country, rather than the Enrons and the WorldComs and unions and the wealthiest of the wealthy. We need to continue that work, not undermine it, at this critical time. And we need not wait until the election is over. The FEC should act as quickly as it can to settle this matter, and bring the confusion over these groups to a close.

I hope the Commissioners will not let short-sighted political or personal ideological concerns deter them from the right course - for themselves, for their parties, and for the public they represent.

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Attachment C

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Other Participants

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LEAGUE OF CONSERVATION VOTERS (LCV)

Key Personnel:

- ✓ President: Deb Callahan

MOVEON.ORG

Key Personnel:

- ✓ President: Wesley Boyd (Co-Founder)
- ✓ Treasurer: Joan Blades (Co-Founder)
- ✓ Secretary: Peter Schurman

27044164101

Attachment G

27044164102



FOR IMMEDIATE RELEASE
Thursday, February 26, 2004

Contact: Jessica Smith, Trevor FitzGibbon,
Kawana Lloyd, Roberto Delgado
(202) 822-5200

MoveOn.org Voter Fund Calls for Justice Dept. Investigation of Administration's Illegal Use of Government Funds For Bush "Re-Election Ads"

GROUP TAKES ACTION IN RESPONSE TO CBS RE-AIRING BUSH MEDICARE AD WHILE REJECTING MOVF MEDICARE AD

CBS Re-Airs Controversial Bush Ad After Stating on February 14th: "The ad has been pulled. It violated our longstanding policy on advocacy advertising."

The MoveOn.org Voter Fund today called on Attorney General John Ashcroft to investigate the Bush Administration's use of federal funds to pay for TV advertising around the new Medicare law, calling them "political re-election ads."

The request came after CBS rejected an ad which MoveOn.org Voter fund proposed to place on CBS – paid for with its members' donated private funds – that counters the Bush Administration ad on Medicare which is now running on CBS. The MOVF ad has appeared on CNN and other networks and on network-affiliated stations around the country.

The ad CBS is airing was created by the same team of consultants who are handling the Bush/Cheney 2004 campaign ads, with \$9 million in federal funds made available by the Department of Health and Human Services. Federal law explicitly forbids the commingling of federal funds and programs with political campaigns.

CBS has taken the position that it will not accept so-called "issue." When MOVF complained and mobilized others to protest the airing of the Bush Medicare Ad, CBS agreed with the criticism and pulled it. But when Republican officials complained, CBS buckled and put the air back on the air.

"That decision was inexplicable, given that CBS executives had admitted that the Bush ad violated their policy," said Eli Pariser, campaign director for MOVF.

Meanwhile, House Democratic Leader Nancy Pelosi, released a statement today critical of CBS.

"If CBS is going to air the Administration ad promoting the new Medicare bill—an ad that the conservative National Taxpayers' Union has called 'an election year ploy rather than a genuine public service announcement'—it should air the MoveOn ad as well. CBS has a responsibility to give the American people both sides of the debate and let their viewers decide for themselves.

"Once they learn the facts, I'm confident that Americans will realize the Republican Medicare bill is

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a bonanza for HMOs and drug companies, and a cruel hoax on our nation's seniors," concluded Pelosi.

A copy of the MOVF letter to the Justice Department is attached. The MoveOn.org Voter Fund is a Section 527 political committee that runs campaigns to inform the public about the policies and programs of the George W. Bush presidency.

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The MoveOn family of organizations consists of three entities. MoveOn.org, a 501(c)(4) organization, primarily focuses on education and advocacy on important national issues. MoveOn.org PAC, a federal PAC, primarily helps members elect candidates who reflect our values. And MoveOn.org Voter Fund, a 527 organization, primarily runs ads exposing President Bush's failed policies in key "battleground" states.

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VOTER FUND STRATEGY: EXECUTIVE SUMMARY

Objective. Our objective is to challenge George Bush's policies and record in order to reduce support for his re-election in 2004. We will concentrate our resources in several states critical to his re-election. In those states, we will reduce his support among swing voters through an empirically driven advertising campaign.

Strategy. Bush's support is eroding on many fronts, foreign and domestic. Yet his potential presidential opponents must spend most of their resources on competing with each other rather than further undermining public support for Bush. As this will continue until mid- to late-March, we believe a strong independent effort that is launched immediately can fill the void and soften Bush's support before he and his eventual opponent begin their head-to-head battle in the spring of 2004. Absent such work, Bush's use of the presidential bully pulpit will put all of us at a disadvantage in the period leading up to March 2004.

Tactics. We will create powerful television advertising to implement this strategy. We will produce convincing anti-Bush TV spots and get them on the air in targeted states. We will buy enough airtime to effectively deliver our message to swing voters in those states. We will sustain our advertising presence continually throughout the pre-primary and primary periods. Our advertising will significantly enhance door-to-door canvassing, labor union membership education, voter registration, and other projects taking place on the ground in the states we target. We will constantly refine our themes and the content and tone of our TV spots to reflect the findings of a vigorous testing program.

Message. Our initial TV advertising will be grouped around three simple themes, which recent polling and focus group research have indicated will get the best response. First, Bush's actions can't be trusted. He tells us he will leave no child behind, but he cuts funding for education. He launches a "healthy forests" initiative that is actually a smokescreen for more logging. Second, Bush's actions reflect a lack of concern for working families. He reduces benefits to pay for tax breaks for the rich. He favors drug companies over seniors who need cheaper medications. Third, Bush's actions and record show lack of competence to solve the nation's problems. He's mismanaged the war in Iraq. He failed to plan adequately for the post-war period. Deficits are out of control. Now, he's got no solution to the jobs problem.

Research and testing. We will continually test and re-evaluate this three-pronged message strategy by conducting polls and focus groups and by staying in touch with allies working on the ground in each of our targeted states. We will refine our understanding of the swing voter population in each state to see which segments are more persuadable than others. We will be sensitive to varying conditions in each state, which may require that different TV spots be run in different locations. We will test the impact of our advertising with before and after polling to be certain we are having the effect we desire. We will test different amounts of advertising to be certain we are buying enough to affect the vote but not more than is necessary. We will constantly troll for new messages that might more effectively achieve our objective, and we will monitor our tone to be sure it resonates with the voters we are after.

Integration with other efforts. We will work collaboratively with other projects pursuing similar strategies. While ours will be the only campaign using large-scale TV advertising during the pre-primary and primary periods, several other well-funded field efforts are underway in some or all of the states we are targeting. We will coordinate with these efforts to ensure that our advertising will enhance public interest in these field campaigns, increase motivation to participate in them, and get them more attention from the local press.

Success. We understand that an autumn 2003/winter 2004 campaign is very early for affecting the vote in November 2004. However, we believe that the outcome of the next presidential election will be largely decided in a few states and determined by relatively small margins. We should never allow there to be a gap in the drumbeat of opposition the public hears about Bush's performance as President, especially in the battleground states, and especially now that his support has dropped to pre-9/11 levels.

The MoveOn family of organizations consists of three entities. MoveOn.org, a 501(c)(4) organization, primarily focuses on education and advocacy on important national issues. MoveOn.org PAC, a federal PAC, primarily

MoveOn.org Voter Fund

Page 2 of 2

helps members elect candidates who reflect our values. And MoveOn.org Voter Fund, a 527 organization, primarily runs ads exposing President Bush's failed policies in key "battleground" states.

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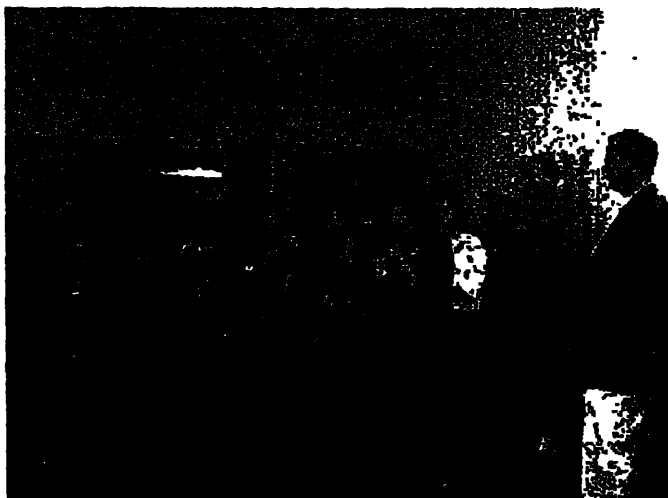
We Will Beat Bush - Archives

The "Mother" of All House Parties

The East Bay for Kerry/MoveOn House party on December 7th combined the forces of two grass-roots organizations based in San Francisco East Bay Area. We had 200 guests eating, drinking, and watching the MoveOn Documentary "Uncovered" featuring Joseph Wilson and Rand Beers from the Kerry campaign.

When Teresa Heinz-Kerry arrived, she handed me a pin that read in the center: "Asses of Evil" with "Bush", "Cheney", "Rumsfeld" and "Ashcroft" surrounding it. She met, greeted and talked to a jam-packed room of Kerry supporters and others who came for the MoveOn documentary. Many were curious, others undecided, or belonging to other candidate camps.

Teresa talked about her life as the daughter of a physician in Africa, about life during a repressive regime, to life inside Washington DC, and a brief intimate glimpse into her courtship with John. She told a rapt crowd about how they met and their first date, and that he did not call again for six months, adding, "He was slow on the uptake". Just as she was about to add more to the story, the phone rang. It was the Senator.



The synchronicity of this call was not lost on the crowd. We all laughed. John then spoke about the Medicare Bill recently signed by the president that effectively forces people into expensive HMO plans and prevents Medicare from using its formidable consumer base to drive the bulk purchase of expensive prescription drugs down. He also spoke about the recent Bush Thanksgiving visit to our military in Iraq, carrying a platter laden down with a fake turkey, smiling for a photo op.

People were hungry for the food we had prepared, but more so, hungry for John's message of hope. After the call, Teresa took questions from the crowd. One of the questions was about grass-roots organizing, and the effect it had on the current presidential campaigns. Teresa responded that grass-roots has to happen at EVERY level, from the Internet, to canvassing and meeting people, to letter writing and phone calling. She reminded us that this was the way to connect with others and to get the message out.

A PBS producer working on a documentary on MoveOn interviewed Teresa. He asked, "Just as radio was for

3/8/2004

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Roosevelt, and television was for Kennedy, the Internet has been defined as the new political grass-roots organizing tool for this era. What is your reaction to that?"

Teresa said, "The Internet is a great grass-roots organizing and political tool; but it is still an adjunct." The producer asked her to clarify. Teresa responded, "Until EVERYONE has access to a computer and knows how to access the Internet, it will still be an adjunct political grassroots organizing tool".

It was hard for Teresa to stay on schedule. The lovely voice of opera singer, Susan Gundunas was on hand to sing a few tunes, and that kept Teresa with us a while longer than expected. Before saying goodbye, she took with her some "Condoleezza Rice Crisples Bars" and "No Child Left Behind Chocolate Chip Cookies", sold to generate donations to the cause. She left with a lift to her step, a warm smile, and some new converts, some of whom were uncommitted and undecided, and some who were definitely committed, but came over to our camp. Because of her.

She gave us a bit of what she does best, connecting us as a community with her heart, compassion, and willingness to fight throughout all her life for the good of all of us. As her husband, John Kerry has throughout his life. Teresa completed the picture many people had unfinished about John Kerry. Now they know they have a "Real Deal". From baking cookies, gathering food donations, staying up late cooking chicken wings, putting up artwork, and decorating that beautiful rambling modern home in the Oakland Hills, we at East Bay for Kerry did our job because we believe grass roots efforts include all of these finer, human details. We brought in more than 80 people to John's birthday party the next night, bringing the room to capacity at 350 the following night

Thanks to Teresa, we kept the party going on, and she helped us here at East Bay for Kerry, throw the Mother of All House Parties.

Fe Bongolan - December 11, 2003
East Bay for Kerry - Berkeley, CA

Posted in [California](#) | [Entry link](#)
By [Pamela Leavey](#) on December 11, 2003 at 11:30 AM

27044164109

Attachment H

-----Original Message-----

From: Aimee Christensen [mailto:info@environment2004.org]
Sent: Thursday, February 26, 2004 2:12 PM
Subject: Help Us Make the Difference in November

Environment



Dear Dave,

★★★★★
Donate to E04 Today

As the Democratic Party closes in on selecting its nominee, the 2004 Presidential election will enter a critical new phase. The primaries have given the Democratic contenders a lot of media attention, but they have been expensive, draining the finances of all the candidates.

Meanwhile, Bush/Cheney '04 has raised over \$131 million dollars to spend entirely on defeating the Democratic nominee. The moment the race for the Democratic nomination ends, the Republican money machine and the Bush/Cheney campaign will launch one of the most extensive media counter-offensives in history.

One element of their counterattack is already underway. The Bush administration is on a campaign to cover up its anti-environment record by announcing small environment-related projects and select enforcement actions in key battleground states. These efforts are designed to deceive local voters and to draw their attention away from the Administration's attempts to dismantle environmental and public health protections nationwide.

Environment2004 is setting the record straight. We are revealing the Bush administration's dangerous environmental agenda and countering its attempts to mask its true policies. To do this we need your financial

support.

We are beginning our campaign in New Hampshire, using the same successful model we employed in our Florida launch. We will hold a series of events in New Hampshire, including the release of a report detailing the statewide impacts of the Bush administration's environmental policies. New Hampshire is a critical state. In 2000, Democrat Al Gore lost the state by a mere 7,211 votes. With your help, we can reach important swing voters and make the difference in 2004.

Please help us make the difference in New Hampshire and our other key states this time around! Visit our website now. With your help we can win back our country and create a safer environment for our children.

Sincerely,
Aimée Christensen
Executive Director

Environment2004
733 15th Street, NW
Suite 314
Washington DC 20005

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